

ORIGINAL

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

OCT 28 2 53 PM '93

DISPATCHED BY MM Docket No. 93-270

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Cordele, Dawson &
Montezuma, Georgia)

RM-8323

RM-8339

NOTICE OF PROPOSED RULE MAKING AND ORDER TO SHOW CAUSE

Adopted: September 30, 1993; Released: October 28, 1993

By the Assistant Chief, Allocations Branch:

Comment Date: December 20, 1993

Reply Comment Date: January 4, 1994

1. Before the Commission for consideration are two interrelated petitions for rule making. The first petition, filed by Radio Cordele, Inc. ("RCI"), licensee of Station WKKN(FM), Channel 252A, Cordele, Georgia, proposes to substitute Channel 236A for Channel 252A, and to modify its license to specify the new Class A channel. In order to accommodate the channel substitution at Cordele, RCI also proposes the substitution of Channel 290A for Channel 236A at Montezuma, Georgia, and the modification of the construction permit for Station WLML(FM) to specify Channel 290A. The second petition, filed by John F. Tuck and Phonson Donaldson, Bankruptcy Court Appointed Receivers for Dawson Broadcasting Company ("DBC"), licensee of Station WAZE(FM), Channel 251A,¹ Dawson, Georgia, seeks the substitution of Channel 251C3 for Channel 251A at Dawson, and modification of the license for Station WAZE(FM) to specify operation on Channel 251C3.² The upgrade at Dawson also requires the substitution of Channel 236A for Channel 252A at Cordele, Georgia, and the substitution of Channel 290A for Channel 236A at Montezuma, Georgia. RCI and DBC each states its willingness to apply for the requested channels, if allotted.

2. In support of its proposal RCI states that although the allotment of Channel 251A at Dawson meets the Commission's minimum distance separation requirements, it creates an interference problem and will greatly reduce

Station WKKN's signal in the areas of Leesburg and Smithville, Georgia. RCI states that the interference problem can be eliminated by its proposal.

3. We believe the public interest would be served by proposing the substitution of Channel 251C3 for Channel 251A at Dawson, Georgia, since it could enable Station WAZE(FM) to expand its coverage area. Channel 251C3 can be allotted to Dawson, Georgia, in compliance with the minimum distance separation requirements of the Commission's Rules, with a site restriction of 19.7 kilometers (12.2 miles) southeast of the community.³ Channel 236A can be allotted to Cordele, Georgia, in compliance with the minimum distance separation requirements of the Commission's Rules, with a site restriction 1.7 kilometers (1.1 miles) southeast at the authorized site of Station WKKN(FM).⁴ Channel 290A can be allotted to Montezuma, Georgia, in compliance with the minimum distance separation requirements of the Commission's Rules, with a site restriction of 0.3 kilometers (0.2 miles) southwest at the construction permit site for Station WLML(FM).⁵

4. In accordance with Section 1.420(g) of the Commission's Rules, we shall propose to modify the license for Station WAZE(FM) without entertaining other expressions of interest in the use of Channel 251C3 at Dawson, or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties. In addition, we shall direct an *Order to Show Cause* to Macon County Broadcasting Company ("Macon County"), the permittee of Station WLML(FM) at Montezuma, Georgia, as to why its construction permit should not be modified to specify operation on Channel 290A in lieu of Channel 236A.

5. RCI and DBC argue that because Macon County holds a construction permit for an unbuilt station and is not yet a licensed facility no "costs" are required to be reimbursed. Whenever an existing licensee or permittee is ordered to change frequencies to accommodate a new channel allotment, Commission policy requires the benefitting party, or parties, to reimburse the affected station for costs incurred. *See Circleville, Ohio*, 8 FCC 2d 159 (1967). Therefore, if Macon County, the permittee for Montezuma can establish costs that directly concern the frequency change, then it could claim reimbursement. *See Burkesville and Russell Springs, KY*, *Cookeville and Spencer, TN*, 5 FCC Rcd 677 (1990). *See also Dyersburg, Tennessee, et al.*, 5 FCC Rcd 2579 (1990), and *Westover, West Virginia*, 48 RR 2d 168 (1980); *recon.* 48 RR 2d 1333 (1981) (addressing the failure of a licensee to state its willingness to reimburse a licensee or permittee). Therefore, RCI and DBC are requested to state their intentions to reimburse Macon County for reasonable costs incurred in changing frequencies.

6. The Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

¹ The *Report and Order* in MM Docket No. 90-475, modified the license for Station WAZE(FM), Dawson to specify operation on Channel 251A. *See* 8 FCC Rcd 4366 (1993).

² On August 3, 1993, Day Communications, Inc., licensee of Station WOHL(FM) Live Oak, Florida, filed an application to downgrade its station to Channel 251C2 at its present site. *See* File No. BMLH-930803KB. The grant of this application would allow Station WAZE to upgrade on Channel 251C3. Final action

on Station WAZE's upgrade may be withheld until Station WOHL's application is granted.

³ The coordinates for Channel 251C3 at Dawson are North Latitude 31-40-03 and West Longitude 84-16-37.

⁴ The coordinates for Cordele on Channel 236A at North Latitude 31-57-26 and West Longitude 83-46-08.

⁵ The coordinates for Channel 290A at Montezuma are North Latitude 32-17-53 and West Longitude 84-02-02.

	Present	Channel No. Proposed
City		
Cordele, Georgia	252A	236A
Montezuma, Georgia	236A	290A

OR

Cordele, Georgia	252A	236A
Dawson, Georgia	251A	251C3
Montezuma, Georgia	236A	290A

7. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Macon County Broadcasting Company, permittee of Station WLML(FM), Channel 236A, Montezuma, Georgia, SHALL SHOW CAUSE why its construction permit should not be modified to specify operation on Channel 290A in lieu of Channel 236A.

8. Pursuant to Section 1.87 of the Commission's Rules, Macon County Broadcasting Company, may, not later than December 20, 1993, file a written statement showing with particularity why its construction permit should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Macon County Broadcasting Company, to furnish additional information. If Macon County Broadcasting Company, raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Macon County Broadcasting Company, will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

9. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following: Macon County Broadcasting Company, P.O. Box 511, Montezuma, Georgia 31063.

10. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

11. Interested parties may file comments on or before **December 20, 1993**, and reply comments on or before January 4, 1993, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

James W. Jennings
Vice President
Radio Cordele, Inc.
910 20th Avenue East
P.O. Box 460
Cordele, GA 31015

John F. Tuck &
Phonso Donaldson
Receivers of Dawson
Broadcasting Company
c/o Truitt Martin, Jr., Esq.
P.O. Box 683
Dawson, GA 31742

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

13. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Victoria M. McCauley
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or

incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.